

# **DISCLOSURE STATEMENT AND PROGRAM DESCRIPTION OF THE ALABAMA PREPAID AFFORDABLE COLLEGE TUITION (PACT) PROGRAM**

**December 2010**

**This Disclosure Statement provides important information concerning certain material risks associated with PACT Contracts. Contract Purchasers are strongly urged and expected to read this Disclosure Statement in its entirety.**

**Until the passage of Act 2010-725, the obligations of PACT were limited obligations payable only from proceeds received from PACT Contract sales and earnings from investment performance. Act 2010-725 appropriates funds from the Education Trust Fund to the PACT Program beginning in the fiscal year ending September 30, 2015. Neither the Contract Purchaser nor Beneficiary has any recourse against the Treasurer, the Board, the PACT Program, any other state or federal government agency, or the State of Alabama in connection with any obligations arising out of the PACT Contracts. The obligations of the PACT Contract are not backed by the full faith and credit of the State of Alabama.**

The terms and features of PACT and the PACT Contract may differ, even materially, from the terms and features described in this Disclosure Statement. Information in this Disclosure Statement is believed to be accurate as of its date and is subject to change without notice. Contract Purchasers also should be aware and consider that no representations or assurances are made by this Disclosure Statement or otherwise, that PACT Contracts will be offered in any subsequent year.

At the PACT Board meeting on March 24, 2009, the PACT Board voted to close the program to new applicants indefinitely.

## **PACT PROGRAM INTRODUCTION**

Pursuant to the Code of Alabama, Section 16-33C-1 through 16-33C-13, the Alabama Legislature created the PACT Program and Trust Fund by enactment of the Wallace-Folsom Prepaid College Tuition Trust Fund Act on May 17, 1989, and has subsequently amended it (the "Act"). Under the Act, PACT is an agency and instrumentality of the State of Alabama. The purpose of PACT was to allow natural persons who are at least 19 years of age and citizens or residents of the United States and certain organizations to prepay a specific number of undergraduate semester hours of tuition and qualified fees of a Beneficiary at an Eligible Educational Institution through the purchase of PACT Contracts.

### **The Treasurer and the Board**

The State Treasurer is Chairperson of the PACT Board. Under the Act, the fifteen-member Board oversees the administration of PACT and its members act as the trustees of the PACT Trust Fund. The statute and the Board have delegated day-to-day administration of PACT to the Treasurer.

### **The PACT Trust Fund**

The PACT Trust Fund ("Trust Fund") holds the assets of PACT. The assets are derived from PACT Contract payments made by Purchasers, and earnings thereon, if any. The purpose of the Trust Fund is to pay future PACT Contract benefits and administrative expenses. For investment purposes, assets in the Trust Fund are commingled and are not segregated by individual PACT Contract.

### **The PACT Administrative Fund**

The PACT Administrative Fund ("Administrative Fund") holds administrative fees paid by Contract Purchasers. The purpose of the Administrative Fund is to pay outstanding operating expenses of administering PACT. Trust Fund principal and earnings may be directly used to supplement balances in the PACT Administrative Fund, as the board deems necessary.

### **PACT Enrollment**

PACT enrollment is closed indefinitely.

### **PACT Contract Types**

The PACT Contracts are the Four-Year University Contract and the One-Year Contract. Risk factors are included herein. Contract Purchasers are strongly advised to thoroughly read the Program Rules.

### **PACT Contract Payments and Distributions**

PACT Contract payments can be made by check, automatic deduction from a checking or savings account, or payroll deduction (where available). Distributions for the payment of PACT Contract benefits will only be made to an Eligible Educational Institution after receipt of an acceptable invoice.

### **PACT Accounts**

A PACT account is established for each PACT Contract and Beneficiary. Once an account is paid in full and the projected enrollment year of the original Beneficiary has been reached, benefits are made available. Each account is established with a specific number of semester hours of Tuition and Qualified Fee payments. The Beneficiary has ten years from the Projected Enrollment Year to use PACT Contract benefits, with an extension granted for active military service.

### **PACT Contract Interpretation**

All PACT Contracts will be construed and interpreted according to the laws of the State of Alabama.

## **DEFINITIONS**

**“Beneficiary”** means the individual originally named in the PACT Contract (or substituted) to receive the PACT Contract benefits.

**“Board”** means the fifteen-member Board of Trustees of the PACT Program.

**“Cancellation”** means discontinuation of the Contract Purchaser’s participation in the PACT Program and the Beneficiary’s right to receive PACT Contract benefits.

**“Code”** means the Internal Revenue Code of 1986, interpreted in accordance with the regulations promulgated thereunder, as amended from time to time.

**“Contract Purchaser”** means any adult person, corporation, trust, charitable organization or other entity eligible to purchase a PACT Contract, and who is obligated to make PACT Contract payments in accordance with the PACT Contract. The Contract Purchaser (and not the Beneficiary or any person or entity that makes a payment) retains ownership of the PACT Contract.

**“Eligible Educational Institutions”** generally includes accredited, post-secondary educational institutions offering credit toward a bachelor’s degree, an associate’s degree, a graduate level or professional degree, or another recognized postsecondary credential, and certain proprietary institutions and post-secondary vocational institutions as set forth in the Code. These institutions must be eligible to participate in certain federal student financial aid programs.

**“Immediate Family Member”** means any of the following relations of the Beneficiary as defined under the Code: a son or daughter, or descendant of either; a stepson or stepdaughter; a brother, sister, stepbrother, or stepsister; the father or mother, or an ancestor of either; a stepfather or stepmother; a son or daughter of a brother or sister; a brother or sister of the father or mother; a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law or sister-in-law; the spouse of the Beneficiary or the spouse of any of the foregoing individuals; or a first cousin.

**“PACT Contract”** consists of the following documents: the Application signed by the Contract Purchaser, the Participation and Payment Schedule, the Disclosure Statement and PACT Rules.

**“Participation and Payment Schedule”** means the document defining the Projected College Entrance Date and frequency, duration, amount and due date of PACT Contract payments based on information provided by the Contract Purchaser in the Application.

**“Program Rules”** means the rules promulgated by the Board to implement the PACT Program that may be amended from time to time as determined by the Board.

**“Projected College Entrance Date”** means the academic school year following the qualified Beneficiary’s projected high school graduation as specified on the Participation and Payment Schedule and is the earliest date for the utilization of PACT Contract benefits.

**“Qualified Fees”** means those fees approved by the Board which are required as a condition of enrollment for all students attending the Eligible Educational Institution in which the Beneficiary is enrolled and is limited to the following: Building Fee, Facility Fee, Technology Fee, Learning Resource Fee, Administrative Fee, Registration Fee, Instructional Fee, Library Fee, Reserve Fund Fee, and General University Fee. A baseline for payment of each fee is established as of September 30, 2009, to be used in calculating future increases of 2.5% annually unless the actual increase is less. If PACT Trust Fund annual earnings (on September 30) increase by more than 5% in two consecutive years, the fee increase in the third year will be the lesser of the actual increase or 2.5% plus the excess return of the first year, provided the Trust Fund’s funded status has not fallen below 90%. Fee increases for the University of Alabama Systems and Auburn University Systems will be based on actual charges.

**“Qualified Tuition Program”** means a higher education savings program or prepaid tuition program that qualifies for treatment under the Code.

**“Tuition”** means the basic undergraduate tuition charged by an Alabama public Eligible Institution, as certified by the institution. A baseline for payment at each Eligible Institution is established as of September 30, 2009, to be used in calculating future increases of 2.5% annually, unless the actual increase is less. If PACT Trust Fund annual earnings (on September 30) increase by more than 5% in two consecutive years, the tuition increase in the third year will be the lesser of the actual increase or 2.5% plus the excess return of the first year, provided the Trust Fund’s funded status has not fallen below 90%. Tuition increases for the University of Alabama Systems and Auburn University Systems will be based on actual charges.

### **RISK FACTORS AND OTHER CONSIDERATIONS**

Certain risk factors relating to participating in PACT are described below.

**Litigation Risks.** There is no assurance that the PACT Program and the Board of Trustees will not be named as a defendant in lawsuits. In 2010, there are two lawsuits pending in the Montgomery County Circuit Court: (1) Green v. Ivey and the PACT Board, Case No. 03-CV-900013, and (2) Perdue v. Callan Associates, Inc, Kay Ivey and the PACT Board, Case No. 03-CV-900556. There is a third lawsuit pending In The United States District Court, Northern District of Alabama Southern Division, McVeigh, et al, v. Callan Associates and the various investment managers utilized by the PACT Board, Case No. CV-09-0685-S. The expenses of litigation are a risk to PACT funds. There are also risks associated with the outcome of litigation in the event of court order or adverse jury verdict.

**No Guarantee; Not Insured.** Participating in PACT entails risk of return. The Trust Fund and investments under PACT are not bank deposits, and are not debt obligations of, or insured or guaranteed by the FDIC, the State, the Board, the Treasurer, the PACT Program, or any other state or federal governmental agency. None of these entities or persons has any legal or moral obligation to ensure the ultimate payout with the respect to the purchase of a PACT Contract.

**Program Dissolution:** The Alabama legislature may dissolve the PACT Program as that authority is provided by Alabama statutes applicable to the PACT Program. Dissolution of the Program could adversely affect investor funds.

**Refund:** If a PACT Contract is cancelled or expires, the Contract Purchaser may request and, subject to the ability of the Trust Fund to pay a refund, receive a refund equal to the Redemption Value of the PACT Contract. The Board, in its discretion, may pay any refund in installments rather than in a lump sum in which case the total refund amount would not be immediately available to the Contract Purchaser. If the Beneficiary receives a degree and the payment of benefits does not exceed the PACT Contract purchase amount, no refund is available.

**Lack of Secondary Market:** No known market exists for resale of PACT Contracts.

**No Assurance of Admission to Eligible Educational Institutions:** Participation in PACT does not constitute a promise, commitment, or guarantee that a Beneficiary: (a) will be accepted as a student by any Eligible Educational Institution; (b) if accepted, will be permitted to continue as a student; (c) will be treated as a state resident for Tuition and Qualified Fees purposes, including Alabama resident status; (d) will graduate from any Eligible Educational Institution; or (e) will achieve any particular treatment under applicable state or federal financial aid programs. If the Beneficiary is not admitted to an Eligible Educational Institution, for any reason, or fails to register for less than the maximum number of academic credit hours for which PACT Contract benefits are payable, for any reason, the Beneficiary likely will realize less than all of the PACT Contract benefits for which he or she otherwise may have been eligible. Also, if a Beneficiary matriculates

at an Alabama in-state institution and does not satisfy the institution's residency requirements, the Beneficiary will be solely responsible for any amounts owed to the institution beyond the payment of Tuition and Qualified Fees prescribed in the PACT Contract.

**Use of Benefits at Private and Out-of-State Eligible Educational Institutions:** PACT Contract benefits may not cover the cost of tuition and Qualified Fees and the Beneficiary will be solely responsible for any amounts owed to the institution beyond the payment prescribed in the PACT Rules.

**Termination:** The PACT Contract terminates when the Beneficiary graduates from college, all of the tuition hours are utilized or ten years from the original Beneficiary's Projected College Entrance Date.

**Substitution of Beneficiary:** The Code limits beneficiary substitution to certain Immediate Family Members. Substitution of a Beneficiary will not result in any refund.

**No Entitlement to Investment Returns:** Contract Purchasers and Beneficiaries are not entitled to receive investment returns from the Trust Fund. Any favorable investment performance, if achieved by the Trust Fund, will enhance the likelihood that PACT's Contract obligations will be performed, but will not result in other direct or indirect benefit to Contract Purchasers or Beneficiaries. Alabama law provides that all money held by the Trust Fund in excess of the current operational expenses of the program and the current amount of PACT's projected future liabilities must be retained in the Trust Fund.

**Inherent Uncertainty of Actuarial Projections:** The Board has engaged the assistance of actuarial experts to project the ability of the Trust Fund to meet PACT's obligations and to assist the Board in establishing the pricing for new PACT Contracts each year. The Board, in consultation with its actuarial experts, has developed assumptions, monitors such assumptions as data becomes available, reviews such assumptions annually and revises as deemed necessary. Because actuarial determinations involve predictions regarding future events, no assurance can be given that such assumptions will prove to be accurate or that PACT will be able to satisfy its future obligations. Annually, the actuarial expert prepares a report detailing all assumptions. This report may be viewed on the Treasurer's website [www.treasury.alabama.gov](http://www.treasury.alabama.gov).

**Inherent Uncertainty of Legislative Activity** Legislative Acts are amended from time to time and there is no guarantee that the funding provided by the Legislature in Act 2010-725 will be adequate to fully fund the PACT Program.

**PACT Rule Changes** The Board has authority to promulgate Rules for the PACT Program and reviews Rules annually. The PACT Rules apply to all PACT Contracts, regardless of the year of purchase. Therefore, there can be no guarantee that Rules will not be changed which may adversely affect PACT Beneficiaries.

**Investment Risks:** As of September 30, 2010, assets in the Trust Fund are as follows:

Asset Class	Allocation	Target
Broad Domestic Equity	16%	14%
International Equity	8%	6%
Domestic Fixed Income	76%	80%
Cash & Equivalents	1%	0%

Certain risks are associated with each investment class. The Board may change the amount of dollars allocated to a specific asset class, or add, eliminate or change the classes. To view the Investment Policy adopted by the Board, visit the website [www.treasury.alabama.gov](http://www.treasury.alabama.gov).

**Limited Use of Qualified Distributions.** Payment is made directly to the Eligible Education Institution upon receipt of an acceptable invoice from the institution for tuition and Qualified Fees. No other qualified distributions are allowed.

**Status of Federal and State Laws and Regulations Governing PACT:** The Act, the Rules, state and federal law, and regulations governing the operation of PACT may change in the future. In addition, Alabama law and federal law relating to the funding of higher education expenses and tax matters are also subject to change. No assurance can be given that such changes in law will not adversely affect the value of participation in PACT.

**Lack of Certainty/Adverse Tax Consequences:** The Pension Protection Act of 2006 provides the federal income tax exclusion for qualified withdrawals from Qualified Tuition Programs. While not presently anticipated, the U.S. Congress could enact legislation that adversely affects the federal tax consequences associated with participation in Qualified Tuition Programs.

**Financial Aid/Student Loans:** The receipt of PACT Contract benefits by a Beneficiary may affect a Beneficiary's qualification for or receipt of financial aid. The receipt of PACT Contract benefits should not impact the Beneficiary's qualification for or receipt of merit-based financial aid. There can be no assurance, however, that the PACT Contract benefits will not be considered either explicitly or implicitly in determining whether a Beneficiary is entitled to or will receive a merit-based scholarship.

Furthermore, the receipt of or potential for receipt of PACT Contract benefits may affect the ability of a Beneficiary to receive private or student loans. Such receipts or potential for receipts may be considered financial resources which preclude the Beneficiary from receiving private or student loans, especially if the loans are in any way need-based. Such considerations may also preclude the Beneficiary from receiving more favorable interest rates or repayment options.

**Other Investment Alternatives:** The Board and the Treasurer make no representations regarding the appropriateness of PACT as an investment alternative. A number of other Qualified Tuition Programs, including the CollegeCounts 529 Fund, and other education savings and investment programs, including Coverdell Education Savings Accounts, are currently available to prospective Contract Purchasers. These programs may offer benefits, including investment options and investment control that are not available under PACT. You should evaluate PACT in the context of your overall financial situation, investment goals, time horizon, higher education goals, other resources and needs (such as liquidity), and other investments. You may want to discuss these issues with a financial and tax advisor.

#### **ADMINISTRATIVE FEES**

Application Fee	\$100
Account Maintenance Fee - Monthly	\$3
Account Maintenance Fee – Lump Sum	\$100
Cancellation Fee	\$75
Beneficiary Substitution Fee	\$55
Change of Contract Purchaser Fee	\$20
Enrollment in a Private/Out-of-State Institution Fee	\$25
Late Payment Fee	\$15
Returned Item Fee	\$15
Document Replacement Fee	\$7 per document
Change in Payment Schedule Fee	\$20

### **MANAGEMENT OF THE TRUST FUND**

Act 2010-725 provided for the appointment of a fifteen member Board. The Trust Fund is administered by this Board. The fifteen members of the Board are the following persons: (1) The State Director of Finance (an ex officio member) ; (2) the Executive Director of the Alabama Commission on Higher Education (an ex officio member) ; (3) the President of the Council of College and University Presidents, or designee (an ex officio member); (4) the State Treasurer (an ex officio member); (5) the Chancellor of the Alabama Department of Postsecondary Education (an ex officio member) or his/her designee; (6, 7) two persons appointed by the Speaker of the State House of Representatives with one being a PACT contract holder; (8) a person appointed by the Lieutenant Governor; 9, 10) two persons appointed by the Governor; (11) a person appointed by the Senate President Pro Tempore; (12) President of Alabama Association of Independent Colleges or Universities, or designee (an ex officio member); (13) a member of the Senate appointed by the Lieutenant Governor; (14) a member of the House of Representatives appointed by the Speaker of the House; (15) Chief Executive Officer of the Retirement Systems of Alabama, or designee (an ex officio member).

The members of the Board serve without compensation, but are entitled to reimbursement for each day's official duties of the Board at the same per diem and travel rate as is paid to State of Alabama employees. Appointed members serve four-year terms of office and are eligible for reappointment. Appointee members shall be experts in the field of investments, market analysis, or financial planning, or on similar matters commensurate with the duties and responsibilities of PACT.

For a listing of the current members of the Board, please visit [www.800alapact.com](http://www.800alapact.com),

The Board is authorized to employ private sector firms to provide investment management, accounting, recordkeeping services, actuarial services, and other services relating to PACT.

The payments received from Contract Purchasers are invested only in instruments, obligations, securities and properties that are deemed appropriate by the Board and that constitute legal investments for the investment of public funds in the State of Alabama, including legal investments for the State Treasurer, and the Alabama Trust Fund. The Trust Fund's assets are subject to market factors and fluctuations affecting their value.

### **FINANCIAL AUDIT**

The Trust Fund's fiscal year begins on October 1 of each year and ends on September 30 of the following year. The Board has engaged the accounting firm of Mauldin & Jenkins, LLC to audit its balance sheet as of September 30, 2010, and the related statements of revenues, expenses, and changes in retained earnings and statement of cash flows for the year ended September 30, 2010. Mauldin & Jenkins, LLC has issued its independent auditor's report to the Board. A copy of such report, along with the financial statements and accompanying footnotes of the Trust Fund, are available on the treasurer's website at [www.treasury.alabama.gov](http://www.treasury.alabama.gov), or by contacting the Treasurer's Office.

### **Annual Investment Rates of Return**

Following are the annual rates of return for total Trust Fund investments. The annual rates of return are computed by taking into account current income, realized and unrealized gains and losses, and investment fees and expenses for the Trust Fund's aggregate investment portfolio.

12 Months ended September 30	Investment Return
1991	13.8%
1992	15.6%
1993	14.8%

1994	0.4%
1995	17.4%
1996	15.0%
1997	26.6%
1998	2.7%
1999	17.9%
2000	14.9%
2001	-13.50%
2002	-10.12%
2003	17.25%
2004	9.92%
2005	10.64%
2006	9.98%
2007	15.48%
2008	-19.16%
2009	1.54%
2010	9.69%

### **SUMMARY OF VALUATION ACTUARIAL ASSUMPTIONS**

Quarterly, the Board reviews the actuarial soundness of the Trust Fund. The projected amount of PACT's future PACT Contract obligations is determined by calculating expected future Alabama tuition and Qualified Fee costs based upon current costs and certain assumptions regarding future periods. Similarly, the Trust Fund's projected assets are determined by calculating expected future assets based upon the actual current value of the Trust Fund's assets and various assumptions regarding future events, such as future rates of return. The projected obligations are then compared with the projected asset values to determine if an actuarial deficit is anticipated.

The projections and valuations are based on various actuarial assumptions. Because the actuarial valuation process relies on such assumptions, actual results may differ, even materially, from the projected results based on those actuarial assumptions. No representation is made or assurance given that future investment returns of the Trust Fund and additional appropriations from the Education Trust Fund will be sufficient for PACT to satisfy its current or future obligations. **If a funding shortfall occurs for any reason, neither the State of Alabama, nor the Treasurer nor the Board is obligated to restore, or otherwise remedy, any such funding shortfall of the Trust Fund.**

The Board engaged the firm of Buck Consultants to render certain actuarial services. In its report to the Board, (the "2010 Actuarial Report"), the Board's actuarial consultant reviewed and recommended the assumptions underlying the analysis contained in the 2010 Actuarial Report for the purpose of projecting the expected financial results of the Trust Fund. The key assumptions underlying the actuarial analysis of the Trust Fund are evaluated by the Board annually, in consultation with its actuarial consultants. As part of this process, the Board gathers and reviews historical data concerning these assumptions. This process has tended to confirm the reasonableness of the material assumptions. Although the Board, in consultation with its actuarial consultants, monitors and revises the actuarial assumptions, there can be no assurance that such assumptions will compare favorably to actual experience. The actuarial report may be viewed in its entirety on the Treasurer's website [www.treasury.alabama.gov](http://www.treasury.alabama.gov), or you may call the Treasurer's Office to receive a copy.



## **PACT CONTRACT, PACT CONTRACT PAYMENTS, ACCOUNTS AND DISTRIBUTIONS –**

These topics are covered in detail in the Program Rules attached to this Disclosure Statement.

### **SECURITIES CONSIDERATIONS**

The Board has not heretofore requested a “no action” letter from the United States Securities and Exchange Commission, nor has it sought any type of ruling or advisory opinion from the Alabama Securities Commission as to whether the PACT Contracts constitute securities. PACT Contracts have not been registered under the Securities Act of 1933 in reliance on an exemption from registration available for obligations issued by a public instrumentality of a state.

### **TAX CONSIDERATIONS**

The following discussion summarizes certain aspects of the Federal and State income, gift, estate and other tax consequences relating to PACT. This discussion does not provide individualized financial or tax advice; does not address state income taxes that may be imposed by any state other than Alabama; and does not address local taxes that may be imposed by Alabama or any other state or locality. You should consult a qualified tax advisor regarding the application of the relevant tax law to your particular financial situation.

**Caveats with Respect to Tax Discussion:** This summary is not exhaustive, and is not intended as tax advice. In addition, no assurance can be given that the IRS will accept the conclusions in this Disclosure Statement, or, if challenged by the IRS, that these conclusions would be sustained in court.

**State of Alabama Taxes:** With respect to Alabama residents, PACT Contract payments, up to \$5,000 per taxpayer per year, are deductible for Alabama income tax purposes. Earnings on the investment of PACT Contract payments are not subject to Alabama income taxes and will not be included in the Alabama taxable income of the Beneficiary or Contract Purchaser. Qualified withdrawals from PACT are exempt from taxation by the State of Alabama.

**Other State and Local Tax Consequences:** Contract Purchasers and Beneficiaries who are subject to taxation by jurisdictions other than Alabama should consult a qualified tax advisor to determine the state and local income, gift, estate, and other tax consequences of participation in PACT. The tax consequences of participation vary from state to state. Other Qualified Tuition Programs and education savings and investment programs may offer state tax benefits, including deductions or exclusions from income, that are not available under PACT. Depending upon the applicable state laws, favorable state tax treatment for investing in a Qualified Tuition Program may be limited to investments made in a Qualified Tuition Program offered by the Contract Purchaser’s or Beneficiary’s home state.

**Taxable Distributions:** The earnings portion of any PACT Contract cancellation refund is includible in computing the Contract Purchaser’s taxable income.

**Tax Penalties on PACT Contract Cancellation Refunds:** The receipt of a refund by the Contract Purchaser will, except as provided below, also be subject to an additional federal income tax of 10% on the earnings portion of the refund that is included in taxable income. The additional 10% federal income tax will not apply, however, if the refund is:

- made after the death of the Beneficiary to the extent permitted by rules and regulations of the IRS,
- attributable to the Beneficiary being disabled (within the meaning of Section 72(m)(7) of the Code),
- made on account of a scholarship to the extent the amount of the refund does not exceed the amount of the scholarship,
- an amount includible in income solely because of the reduction in the amount of qualified higher education expenses attributable to the amount of such expenses taken into

account in determining the allowed amount of Hope Scholarship and Lifetime Learning Credits.

**Change in Beneficiary, Rollovers between Accounts, and Transfer or Rollovers Between Qualified Tuition Programs:** A Contract Purchaser may change the Beneficiary or rollover a refund to another Beneficiary. The earnings portion of the refund will not be subject to federal income tax, if:

- the new Substitute Beneficiary is an Immediate Family Member of the prior Beneficiary, and
- in the case of a rollover, such rollover was made within 60 days of the refund.

A Contract Purchaser may rollover or transfer a refund to another Qualified Tuition Program for a different or the same Beneficiary. The earnings portion of the refund will not be subject to federal income tax if:

- the new Substitute Beneficiary is an Immediate Family Member of the prior Beneficiary,
- the rollover was made within 60 days of the refund,
- in the case of a transfer or rollover to an account of the same Beneficiary, the transfer or rollover does not occur within 12 months of a previous transfer or rollover to a Qualified Tuition Program for the benefit of the same Beneficiary.

The Contract Purchaser is responsible for determining whether the earnings portion of a transfer or rollover to PACT or to another Qualified Tuition Program meets the above rules for exclusion from income for tax purposes, for substantiating the facts relating to the transfer or rollover to the IRS to the extent required by the IRS, and for reporting for federal income tax purposes any amount of earnings that is attributable to the transfer or rollover that must be included in income. A transfer or rollover from an account in another Qualified Tuition Program may have adverse tax consequences to you, including the recapture of previously allowed state income tax deductions and the loss of other state tax benefits.

**Federal Gift and Estate Taxes:** Contributions to PACT Contracts are considered completed gifts for federal estate and gift tax purposes. Generally, if the Contract Purchaser dies while there is monetary value of the PACT Contract, the value of the PACT Contract will not be included in the Contract Purchaser's estate (except in the situation described below relating to the gift tax exclusion election for contributions exceeding the limits applicable for any one year). However, refunds received on account of the death of the Beneficiary are, or may be, included in the gross estate of the Beneficiary for federal estate tax purposes.

PACT Contract payments made are potentially subject to federal gift tax payable by the Contract Purchaser. Generally, if a Contract Purchaser's payment for a Beneficiary in a single year, together with all other gifts by the Contract Purchaser to the Beneficiary in that year, are less than the gift tax annual exclusion amount the PACT Contract payments may not result in federal gift tax liability for the Contract Purchaser.

If a PACT Contract is transferred to a Successor Account Owner, there could be federal gift or estate tax consequences.

**Hope Scholarship and Lifetime Learning Credits:** You may be able to claim a Hope Scholarship credit or a Lifetime Learning Credit in the same year in which you receive PACT Contract Benefits for a Beneficiary. You should consult a qualified tax advisor regarding the availability of these credits.

## **MISCELLANEOUS**

**Reporting:** PACT will provide an annual statement of your account. PACT is required by law to report to the IRS refunds and distributions. The Contract Purchaser is required to provide information needed to comply with any legal reporting requirements. The Contract Purchaser/Beneficiary is responsible for filing federal and state tax returns and any other reports required by law.

**Special Petition:** Any Contract Purchaser, corporation, or organization desiring to petition for relief from the Rules dictated herein may do so by filing a written petition to the Board. The Advisory Council of the Board, upon recommendation from Legal Counsel, will render decisions on behalf of the Board.

**Amendment of the Rules:** The Board may promulgate such Rules as are deemed necessary to implement the PACT Program and may amend such Rules. Annually, the Rules will be published as part of the Disclosure Statement and made available at the Treasurer's website. It is the responsibility of the Contract Purchaser to review the Rules from year to year for amendments or additions.

**How to Contact PACT:** PACT is located in the RSA Union Building, 100 North Union Street, Suite 660, Montgomery, Alabama 36130. Brochures and applications are available from [www.treasury.alabama.gov](http://www.treasury.alabama.gov) and the Treasurer's office. If you have any questions about PACT, please call 800-252-7228 or 344-242-7514.

## **PACT PRIVACY NOTICE**

PACT respects the right to privacy. We also know that Contract Purchasers expect us to conduct business in an accurate and efficient manner. To do so, we must collect and maintain certain nonpublic personal information about the Contract Purchaser and Beneficiary. This is information we collect from Contract Purchasers on the application(s) or other forms, and from the transactions Contract Purchasers make with us or the PACT Records Administrator. We do not disclose any nonpublic personal information about you except as permitted by law. For instance, to effect transactions that you request or authorize, we may disclose information to companies that perform services on our behalf, such as printers. These companies will use this information only for the services for which we hired them, and are not permitted to use or share this information for any other purpose. To protect your nonpublic personal information internally, we permit access to it only by authorized employees, and maintain physical, electronic and procedural safeguards to guard this information.